

NONUSE APPLICATION AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill deals with nonuse applications.

Highlighted Provisions:

This bill:

▶ states that approval of one or more nonuse applications, or successive overlapping nonuse applications, does not protect a water right that is already subject to forfeiture, nor does the approval of one or more nonuse applications constitute beneficial use of water; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-1-4, as last amended by Laws of Utah 2015, Chapters 249 and 282

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **73-1-4** is amended to read:

73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within



28 **seven years -- Nonuse application.**

29 (1) As used in this section:

30 (a) "Public entity" means:

31 (i) the United States;

32 (ii) an agency of the United States;

33 (iii) the state;

34 (iv) a state agency;

35 (v) a political subdivision of the state; or

36 (vi) an agency of a political subdivision of the state.

37 (b) "Public water supplier" means an entity that:

38 (i) supplies water, directly or indirectly, to the public for municipal, domestic, or
39 industrial use; and

40 (ii) is:

41 (A) a public entity;

42 (B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public
43 Service Commission;

44 (C) a community water system:

45 (I) that:

46 (Aa) supplies water to at least 100 service connections used by year-round residents; or

47 (Bb) regularly serves at least 200 year-round residents; and

48 (II) whose voting members:

49 (Aa) own a share in the community water system;

50 (Bb) receive water from the community water system in proportion to the member's
51 share in the community water system; and

52 (Cc) pay the rate set by the community water system based on the water the member
53 receives; or

54 (D) a water users association:

55 (I) in which one or more public entities own at least 70% of the outstanding shares; and

56 (II) that is a local sponsor of a water project constructed by the United States Bureau of
57 Reclamation.

58 (c) "Shareholder" means the same as that term is defined in Section 73-3-3.5.

59 (d) "Water company" means the same as that term is defined in Section 73-3-3.5.

60 (e) "Water supply entity" means an entity that supplies water as a utility service or for
61 irrigation purposes and is also:

62 (i) a municipality, water conservancy district, metropolitan water district, irrigation
63 district, or other public agency;

64 (ii) a water company regulated by the Public Service Commission; or

65 (iii) any other owner of a community water system.

66 (2) (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the
67 appropriator's successor in interest abandons or ceases to use all or a portion of a water right for
68 a period of seven years, the water right or the unused portion of that water right is subject to
69 forfeiture in accordance with Subsection (2)(c).

70 (b) (i) An appropriator or the appropriator's successor in interest may file an
71 application for nonuse with the state engineer.

72 (ii) If a person described in Subsection (2)(b)(i) files and receives approval on a nonuse
73 application, nonuse of the water right subject to the application is not counted toward a
74 seven-year period described in Subsection (2)(a) during the period of time beginning on the day
75 on which the person files the application and ending on the day on which the application
76 expires without being renewed.

77 (iii) If a person described in Subsection (2)(b)(i) files and receives approval on
78 successive, overlapping nonuse applications, nonuse of the water right subject to the
79 applications is not counted toward a seven-year period described in Subsection (2)(a) during
80 the period of time beginning on the day on which the person files the first application and
81 ending on the day on which the last application expires without being renewed.

82 (iv) Approval of ~~[a]~~ one or more nonuse [application] applications, or successive
83 overlapping nonuse applications, does not protect a water right that is already subject to
84 forfeiture under Subsection (2)(a) for full or partial nonuse of the water right, nor does the
85 approval of one or more nonuse applications constitute beneficial use of the water for purposes
86 of calculating the 15-year period in Subsection (2)(c)(i).

87 (v) A nonuse application may be filed on all or a portion of the water right, including
88 water rights held by a water company.

89 (vi) After giving written notice to the water company, a shareholder may file a nonuse

90 application with the state engineer on the water represented by the stock.

91 (c) (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the water
92 right may not be forfeited unless a judicial action to declare the right forfeited is commenced
93 within 15 years from the end of the latest period of nonuse of at least seven years.

94 (ii) (A) The state engineer, in a proposed determination of rights prepared in
95 accordance with Section 73-4-11, may not assert that a water right was forfeited unless a period
96 of nonuse of seven years ends or occurs during the 15 years immediately preceding the day on
97 which the state engineer files the proposed determination of rights with the court.

98 (B) After the day on which a proposed determination of rights is filed with the court a
99 person may not assert that a water right subject to that determination was forfeited during the
100 15-year period described in Subsection (2)(c)(ii)(A), unless the state engineer asserts forfeiture
101 in the proposed determination, or a person makes, in accordance with Section 73-4-11, an
102 objection to the proposed determination that asserts forfeiture.

103 (iii) A water right, found to be valid in a decree entered in an action for general
104 determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim
105 of forfeiture based on a seven-year period of nonuse that begins after the day on which the state
106 engineer filed the related proposed determination of rights with the court, unless the decree
107 provides otherwise.

108 (iv) If in a judicial action a court declares a water right forfeited, on the date on which
109 the water right is forfeited:

110 (A) the right to use the water reverts to the public; and

111 (B) the water made available by the forfeiture:

112 (I) first, satisfies other water rights in the hydrologic system in order of priority date;

113 and

114 (II) second, may be appropriated as provided in this title.

115 (d) Except as provided in Subsection (2)(e), this section applies whether the unused or
116 abandoned water or a portion of the water is:

117 (i) permitted to run to waste; or

118 (ii) used by others without right with the knowledge of the water right holder.

119 (e) This section does not apply to:

120 (i) the use of water according to a lease or other agreement with the appropriator or the

121 appropriator's successor in interest;

122 (ii) a water right if its place of use is contracted under an approved state agreement or
123 federal conservation fallowing program;

124 (iii) those periods of time when a surface water or groundwater source fails to yield
125 sufficient water to satisfy the water right;

126 (iv) a water right when water is unavailable because of the water right's priority date;

127 (v) a water right to store water in a surface reservoir or an aquifer, in accordance with
128 Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:

129 (A) the water is stored for present or future use; or

130 (B) storage is limited by a safety, regulatory, or engineering restraint that the
131 appropriator or the appropriator's successor in interest cannot reasonably correct;

132 (vi) a water right if a water user has beneficially used substantially all of the water right
133 within a seven-year period, provided that this exemption does not apply to the adjudication of a
134 water right in a general determination of water rights under Chapter 4, Determination of Water
135 Rights;

136 (vii) except as provided by Subsection (2)(g), a water right:

137 (A) (I) owned by a public water supplier;

138 (II) represented by a public water supplier's ownership interest in a water company; or

139 (III) to which a public water supplier owns the right of use; and

140 (B) conserved or held for the reasonable future water requirement of the public, which
141 is determined according to Subsection (2)(f);

142 (viii) a supplemental water right during a period of time when another water right
143 available to the appropriator or the appropriator's successor in interest provides sufficient water
144 so as to not require use of the supplemental water right; or

145 (ix) a period of nonuse of a water right during the time the water right is subject to an
146 approved change application where the applicant is diligently pursuing certification.

147 (f) (i) The reasonable future water requirement of the public is the amount of water
148 needed in the next 40 years by:

149 (A) the persons within the public water supplier's reasonably anticipated service area
150 based on reasonably anticipated population growth; or

151 (B) other water use demand.

152 (ii) For purposes of Subsection (2)(f)(i), a community water system's reasonably
153 anticipated service area:

154 (A) is the area served by the community water system's distribution facilities; and

155 (B) expands as the community water system expands the distribution facilities in
156 accordance with Title 19, Chapter 4, Safe Drinking Water Act.

157 (g) For a water right acquired by a public water supplier on or after May 5, 2008,
158 Subsection (2)(e)(vii) applies if:

159 (i) the public water supplier submits a change application under Section 73-3-3; and

160 (ii) the state engineer approves the change application.

161 (3) (a) The state engineer shall furnish a nonuse application form requiring the
162 following information:

163 (i) the name and address of the applicant;

164 (ii) a description of the water right or a portion of the water right, including the point of
165 diversion, place of use, and priority;

166 (iii) the quantity of water;

167 (iv) the period of use;

168 (v) the extension of time applied for;

169 (vi) a statement of the reason for the nonuse of the water; and

170 (vii) any other information that the state engineer requires.

171 (b) (i) Upon receipt of the application, the state engineer shall publish a notice of the
172 application once a week for two successive weeks:

173 (A) in a newspaper of general circulation in the county in which the source of the water
174 supply is located and where the water is to be used; and

175 (B) as required in Section 45-1-101.

176 (ii) The notice shall:

177 (A) state that an application has been made; and

178 (B) specify where the interested party may obtain additional information relating to the
179 application.

180 (c) Any interested person may file a written protest with the state engineer against the
181 granting of the application:

182 (i) within 20 days after the notice is published, if the adjudicative proceeding is

183 informal; and

184 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
185 formal.

186 (d) In any proceedings to determine whether the nonuse application should be
187 approved or rejected, the state engineer shall follow the procedures and requirements of Title
188 63G, Chapter 4, Administrative Procedures Act.

189 (e) After further investigation, the state engineer may approve or reject the application.

190 (4) (a) The state engineer shall grant a nonuse application on all or a portion of a water
191 right for a period of time not exceeding seven years if the applicant shows a reasonable cause
192 for nonuse.

193 (b) A reasonable cause for nonuse includes:

194 (i) a demonstrable financial hardship or economic depression;

195 (ii) physical causes or changes that render use beyond the reasonable control of the
196 water right owner so long as the water right owner acts with reasonable diligence to resume or
197 restore the use;

198 (iii) the initiation of water conservation or efficiency practices, or the operation of a
199 groundwater recharge recovery program approved by the state engineer;

200 (iv) operation of legal proceedings;

201 (v) the holding of a water right or stock in a mutual water company without use by any
202 water supply entity to meet the reasonable future requirements of the public;

203 (vi) situations where, in the opinion of the state engineer, the nonuse would assist in
204 implementing an existing, approved water management plan; or

205 (vii) the loss of capacity caused by deterioration of the water supply or delivery
206 equipment if the applicant submits, with the application, a specific plan to resume full use of
207 the water right by replacing, restoring, or improving the equipment.

208 (5) (a) Sixty days before the expiration of a nonuse application, the state engineer shall
209 notify the applicant by mail or by any form of electronic communication through which receipt
210 is verifiable, of the date when the nonuse application will expire.

211 (b) An applicant may file a subsequent nonuse application in accordance with this
212 section.

Legislative Review Note
Office of Legislative Research and General Counsel